Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 273 of the	)	CC Docket No. 96-254
Communications Act of 1934, as amended	)	
by the Telecommunications Act of 1996	)	

COMMENTS OF U S WEST, INC.

John L. Traylor
Coleen M. Egan Helmreich
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2798

Attorneys for
U S WEST, INC.

Of Counsel,
Dan L. Poole

February 24, 1997

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of Section 273 of the	)	CC Docket No. 96-254
Communications Act of 1934, as amended	)	
by the Telecommunications Act of 1996	)	

COMMENTS OF U S WEST, INC.

I. SUMMARY

Manufacturing telecommunications equipment and CPE consists of the design, development, and fabrication of such equipment. However, notwithstanding the general prohibition against manufacturing in Section 273(a) of the Communications Act (the "Act"), Congress created broad exceptions. In Section 273(b), Congress explicitly authorized the Bell operating companies ("BOC"): (i) to engage in design and development of telecommunications equipment in close collaboration with a manufacturer of telecommunications equipment or CPE, (ii) to engage in all aspects of research related to telecommunications equipment and CPE, and (iii) to enter into royalty agreements with manufacturers of telecommunications equipment, all upon enactment. U S WEST supports the Commission's goal in this docket to preserve the incentives offered by Congress with these exceptions for the BOCs to develop innovative products, solutions, and technologies. The Commission should not adopt rules which would have the effect of restricting or restraining U.S. companies' creativity and innovation or their

ability to participate in the global market in the design and development of telecommunications equipment and CPE.

The Commission's current disclosure rules and standards will meet the BOCs' disclosure requirements in Section 273(c) of the Act for the benefit of manufacturing entities. Manufacturers need no more and no less information than that required by interconnectors. Additional disclosure rules are not required. Because the sheer number of manufacturers is so much larger than the number of interconnectors, U S WEST advocates utilizing Internet notification for short-term notice of changes, rather than individual notification to each manufacturer.

The nondiscrimination and procurement standards in Section 273(e) of the Act apply to a BOC's procurement of telecommunications: (i) when a BOC is authorized to engage in manufacturing under Section 273(a), and (ii) when a BOC enters into a permitted royalty arrangement with a manufacturer of telecommunications equipment under Section 273(b)(2)(B).

The Commission should not adopt unnecessary rules in this docket, because the rules, standards, and safeguards in Section 273 are clear. Moreover, the Commission should not adopt unnecessary rules which may discourage innovation and invention by America's leading telecommunications providers and which may handicap American businesses in the global market for telecommunications equipment and CPE.

II. A BELL OPERATING COMPANY IS PERMITTED TO MANUFACTURE TELECOMMUNICATIONS EQUIPMENT AND CUSTOMER PREMISES EQUIPMENT WHEN THIS COMMISSION AUTHORIZES IT TO PROVIDE INTERLATA SERVICES IN ANY ONE OF ITS STATES.

Section 273(a) of the Act authorizes a Bell operating company ("BOC") to manufacture and provide telecommunications equipment and to manufacture customer premises equipment ("CPE") when the Federal Communications Commission ("Commission") authorizes the BOC to provide interLATA services in one of its in-region states.[1] In the Notice of Proposed Rulemaking in this docket, the Commission tentatively concludes that will occur "once that BOC has obtained authority to offer interLATA service in any of its in-region states."[2] U S WEST agrees with that conclusion for several reasons.

It would represent a strained and economically insupportable reading of Section 273(a) to argue that a BOC is authorized to engage in manufacturing telecommunications equipment and CPE only within the state in which it obtains authorization to provide interLATA services. BOC personnel who may be engaged in the design, fabrication, distribution, and sale of manufactured products may not be resident in that state. The facilities which are used to fabricate and assemble the manufactured products may or may not be located in that state. As a practical matter, the distribution and sale of the manufactured products cannot be confined to that state and, in fact, all of the customers and markets for the products may be

---

[1] 47 U.S.C. § 273(a).

[2] In the Matter of Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, CC Docket No. 96-254, Notice of Proposed Rulemaking, FCC 96-472, rel. Dec. 11, 1996 ("Notice") ¶ 8.

located in other states. The first state in which a BOC may be authorized to provide interLATA services may have no fabrication or plant facilities.

It would also represent a strained and insupportable reading of Section 273(a) to argue that a BOC is authorized to engage in manufacturing telecommunications equipment and CPE only after it obtains authorization to provide interLATA services in all of its in-region states. Although Congress adopted a blanket restriction in Section 271(b)(1) which prohibits a BOC from providing interLATA services in any of its in-region states until it obtains authorization from the Commission,[3] Congress did not design the Telecommunications Act of 1996 (the "1996 Act")to require a BOC to provide interLATA services. Section 271(d)(1) permits the BOC to select the in-region states in which it will seek authorization to provide interLATA services.[4] For any number of technical, financial, and strategic reasons, a BOC may decide not to provide interLATA services in one or more of its states, or it may decide to enter the interLATA market in a phased approach over an extended period of time. The Act permits a BOC to engage in manufacturing, based upon authorization to provide interLATA services in the first of its in-region states, not in the last of its in-region states. U S WEST agrees with the Commission's tentative conclusion.

[3] 47 U.S.C. § 271(b)(1).

[4] 47 U.S.C. § 271(d)(1).

III. MANUFACTURING HAS THE SAME MEANING UNDER THE ACT AS IT HAD UNDER THE AT&T CONSENT DECREE. HOWEVER, CONGRESS AUTHORIZED THE BOCS TO ENGAGE IN THREE BROAD ACTIVITIES RELATED TO MANUFACTURING WHICH ARE EXPLICITLY PERMITTED UNDER THE ACT UPON ENACTMENT.

A. The Definition Of "Manufacturing" Under The Act Begins With The Definition Under The AT&T Consent Decree.

Section 273(h) provides that the term manufacturing has the same meaning as it had under the AT&T Consent Decree.[5] Section II(D)(2) of the AT&T Consent Decree prohibited a BOC or any affiliated enterprise from manufacturing or providing telecommunications equipment or CPE. However, Section VIII(A) of the AT&T Consent Decree permitted a BOC "to provide, but not manufacture, customer premises equipment." In addition, the United States District Court for the District of Columbia (the "Court") granted to all of the RBOCs a generic waiver of Section II(D)(2) of the AT&T Consent Decree to permit them to provide, but not manufacture, telecommunications equipment for carriers. Section 271(f) of the Act provides that Section 273 shall not prohibit a BOC or affiliate from engaging in any activity after the date of enactment of the 1996 Act, if the activity had been authorized in an order entered by the Court on or prior to the enactment of the 1996 Act. Accordingly, upon enactment, the 1996 Act prohibited the BOCs from manufacturing telecommunications equipment and CPE. It did not prohibit the BOCs from providing CPE to end users or from providing telecommunications equipment to carriers.

---

[5] United States v. American Tel. And Tel. Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. U.S., 460 U.S. 1001 (1983) ("AT&T Consent Decree").

"Manufacture" and "manufacturing" were not defined terms in the AT&T Consent Decree. In June of 1987, AT&T filed a motion with the Court for a declaratory ruling regarding the meaning of the term "manufacture" in Section II(D)(2) of the AT&T Consent Decree. In ruling on AT&T's motion, the Court said that the Regional Companies were barred "from the entire manufacturing process, including design, development, and fabrication"[6] of telecommunications equipment and CPE.

In the Notice, the Commission observes that the Court "determined that the terms 'manufacture' and 'manufacturing' extend to the 'design, development and fabrication' of telecommunications equipment, CPE, and the 'software integral to [this] equipment hardware, also known as firmware."[7] U S WEST agrees with the Commission's tentative conclusion that this also represents the definition of "manufacturing" and "manufacture" under the Act.[8]

B. Section 273(b) Authorizes A Bell Operating Company To Engage In Close Collaboration, To Engage In Research Activities, And To Enter Into Royalty Agreements Upon Enactment.

Notwithstanding the prohibition on manufacturing telecommunications equipment and CPE in Section 273(a) until a BOC obtains authorization to provide interLATA services, and notwithstanding Section 273(h) which provides that "manufacturing" has the same meaning under the Act as it had under the AT&T

[6] United States v. Western Elec. Co., 675 F. Supp. 655, 662 (D.D.C. 1987).

[7] Notice ¶ 10.

[8] Id., citing United States v. Western Elec. Co., 675 F. Supp. 655, 662, 667 n.54 (D.D.C. 1987).

Consent Decree, Congress modified the prohibition on manufacturing in Section 273(a) to describe three activities in which the BOCs are permitted to engage upon enactment of the 1996 Act. The three activities are:

> (1) A BOC may engage in close collaboration with any manufacturer of CPE or telecommunications equipment during the design and development of hardware, software, or combinations thereof related to such equipment;[9]
>
> (2) A BOC may engage in research activities related to manufacturing;[10] and
>
> (3) A BOC may enter into royalty agreements with manufacturers of telecommunications equipment.[11]

In the Notice, the Commission asks a series of questions about these three activities. The Commission seeks comment "on the types of activities that would constitute 'close collaboration.'"[12] The Commission seeks comment on the "appropriate definitions for the terms 'research activities' and 'royalty agreements.'"[13] In connection with royalties and royalty agreements, the Commission also seeks comment about whether a BOC may have "incentives to favor equipment on which it can collect a royalty" and whether there are "ways to protect against potential anticompetitive abuses"[14]

---

[9] 47 U.S.C. § 273(b)(1).

[10] 47 U.S.C. § 273(b)(2)(A).

[11] 47 U.S.C. § 273(b)(2)(B).

[12] Notice ¶ 11.

[13] Id. ¶ 12.

[14] Id.

1. The BOCs Are Permitted To Engage In Close Collaboration During The Design And Development Phases Of Telecommunications Equipment And CPE.

Under the AT&T Consent Decree, design, development, and fabrication of telecommunications equipment and CPE by the RBOCs were regarded as prohibited manufacturing. Even though Section 273(h) provides that "manufacturing" has the same meaning under the Act as it had under the AT&T Consent Decree, Congress modified the prohibition. Section 273(b)(1) provides that the BOCs are permitted to engage in close collaboration with any manufacturer of telecommunications equipment or CPE "during the design and development" of hardware, software, or combinations thereof related to such equipment.

It is not coincidental that Congress used those words. "Design and development" were functions specifically regarded as included within the definition of "manufacturing" by the Court. The Court said that manufacturing telecommunications equipment and CPE consists of design, development, and fabrication. Where the AT&T Consent Decree formerly prohibited the BOCs from engaging in any aspect of product design or development, Section 273(b)(1) now permits the BOCs to have a role during product design and development. Congress did not modify the definition of manufacturing to permit the BOCs to have a role in the fabrication process, until they obtain authorization to provide in-region interLATA services.

a. Congress Intended That The Meaning Of "Close Collaboration" Would Be Dynamic And Would Encompass Any Joint Endeavor Between A BOC And A Manufacturer With Regard To Product Design And Development.

Section 273(b)(1) permits a BOC to engage in "close collaboration" with a manufacturer. The Act does not define "close collaboration." The dictionary defines "collaborate" as: "to work jointly with others especially in an intellectual endeavor," "to cooperate with or assist," "to cooperate with an agency or instrumentality with which one is not immediately connected."[15]

Based upon this definition, the meaning of Section 273(b)(1) becomes clear. It permits a BOC to work jointly with a manufacturer during all aspects of the product design and development phases of telecommunications equipment and CPE. It permits a BOC to engage, in a joint endeavor with a manufacturer, in product design and development. This includes developing all aspects of product-specific functional, operating, and design specifications. The only limitation in Section 273 is that the joint endeavor between a BOC and a manufacturer cannot extend to the fabrication phase of the product.

Congress did not intend the scope of collaborative efforts by a BOC and a manufacturer during the design and development phases to be circumscribed. The hallmark of design and development consists of intellectual invention and

[15] Webster's Seventh New Collegiate Dictionary 162 (7th ed. 1969).

innovation where the expertise and experience of a BOC and a manufacturer can be brought together to develop "innovative products, solutions, and technologies."[16]

Congress did not intend to restrict or restrain their creativity. "Close collaboration" between a BOC and a manufacturer during the design and development phases of telecommunications equipment and CPE is intended to include structured, planned, and well-defined product goals and objectives as well as the unforeseen and unplanned discoveries and results of mutual scientific exploration, innovation, and invention.

b. Section 273(b)(1) Does Not Prohibit Close Collaboration Between More than One BOC And A Manufacturer.

Section 273(b)(1) permits a BOC to engage in close collaboration with any manufacturer of telecommunications equipment or CPE during the product design and development stages upon enactment. Only after a BOC is authorized to engage in manufacturing does Section 273 restrict the relationships which a BOC or its manufacturing affiliate may establish. Section 273(a) provides:

> [N]either a Bell operating company nor any of its affiliates may engage in such manufacturing in conjunction with a Bell operating company not so affiliated or any of its affiliates.

In the Notice, the Commission tentatively concludes, based on "the broad language of Section 273(b)(1)," that this restriction should also apply to close collaboration between a BOC and another BOC's manufacturing affiliate or between

[16] Notice ¶ 12.

the manufacturing affiliates of two unaffiliated BOCs.[17] U S WEST disagrees with the Commission's characterization of Section 273(b)(1) and with its tentative conclusion.

Section 271(b)(1) expressly authorizes a BOC to engage in close collaboration with any manufacturer of telecommunications equipment or CPE during the product design and development phases. This means that one or more BOCs would be permitted to engage in close collaboration with a single unaffiliated manufacturer. It also means that a BOC would be permitted to engage in close collaboration with another unaffiliated BOC manufacturing entity. Congress did not restrict close collaboration only to collaboration between a BOC and an unaffiliated non-BOC manufacturer, nor did it prohibit several BOCs from engaging in close collaboration with a single unaffiliated manufacturer at the same time on a common project. The Commission's tentative conclusion that "close collaboration" under Section 273(b)(1) is circumscribed is not supportable.

After a BOC obtains authorization to engage in all aspects of manufacturing, including fabrication, the restrictions in Section 273(a), which prohibit a BOC and its manufacturing affiliate from engaging in manufacturing with another BOC or its manufacturing affiliate, apply. However, these restrictions do not apply when several BOCs engage in close collaboration with an unaffiliated manufacturer during the design and development phases of a joint or common project. Congress explicitly provided in Section 273(b) that close collaboration by one or more BOCs

[17] Id. ¶ 11.

with a single unaffiliated manufacturer does not represent a manufacturing activity which is subject to the prohibitions in Section 273(a).

2. The BOCs Are Permitted To Engage In Research Related To All Aspects Of Manufacturing.

Under the AT&T Consent Decree and under the Act, manufacturing could be construed to include any aspect of research related to the design, development, or fabrication of telecommunications equipment and CPE. However, Congress modified the definition of "manufacturing" to make it clear in Section 273(b)(2) that research by the BOCs related to manufacturing (i.e., research related to the product design, development, as well as fabrication of telecommunications equipment and CPE) is not prohibited under the Act. This authority is effective upon enactment. This provision of the Act requires no clarification.

3. The BOCs Are Permitted To Enter Into Royalty Agreements With Manufacturers of Telecommunications Equipment.

Under the AT&T Consent Decree and under the Act, manufacturing could be construed to include a BOC's receipt of royalties from a manufacturer of telecommunications equipment. However, Congress modified the definition of "manufacturing" to make it clear in Section 273(b)(3) that a BOC's receipt of royalties from a manufacturer of telecommunications equipment is not prohibited under the Act. This authority is effective upon enactment.

"Telecommunications equipment" and "customer premises equipment" were defined separately under the AT&T Consent Decree, and they are defined separately in the Act. They are mutually exclusive. "The term 'customer premises

equipment' means equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications."[18] "The term 'telecommunications equipment' means equipment, other than customer premises equipment, used by a carrier to provide telecommunications services, and includes software integral to such equipment (including upgrades)."[19] This distinction is relevant to the royalty agreements into which BOCs may enter.

a. The Form Of A Licensing Arrangement And The Compensation Should Be Matters Of Private Negotiation Between A BOC And A Manufacturer.

Section 273(b)(3) provides that the BOCs are permitted to enter into royalty agreements with "manufacturers of telecommunications equipment." The form of these arrangements between a BOC and a manufacturer will, and must, vary depending upon the nature of the property interest involved. These arrangements should be matters for negotiation between the parties, rather than the subject of Commission rules.

By negative implication, because of its obvious omission, and based upon the legislative history of this subsection, Section 273(b)(3) does not permit the BOCs to enter into royalty agreements with manufacturers of CPE.

Because Section 273(b)(1) permits a BOC to collaborate with a manufacturer during product design and development and because Section 273(b)(2) permits a BOC to engage in research related to manufacturing, it is not unlikely that the BOC

[18] 47 U.S.C. § 3(14).

[19] 47 U.S.C. § 3(45).

will discover, invent, create, develop, or apply an intellectual concept or idea in connection with the design or development of telecommunications equipment. The BOC's contribution to the design and development phases may be in the form of a valuable intellectual property interest.

Indeed, the Commission acknowledged in the Notice its desire to "preserve BOC incentives to research and develop innovative products, solutions and technologies."[20] Legal rights are extended for the protection of valuable intellectual property interests, and they take many forms. State law and federal law extend legal protection and rights for a range of intellectual property interests, including trade secrets, trademarks, service marks, and intellectual property interests protected by copyright and patent under federal law.

In the course of its own research, or as a result of close collaboration with a manufacturer, a BOC may contribute a valuable intellectual property interest or right to the manufacturing design and development endeavor. The contribution could take many forms. For example, a BOC could transfer outright ownership of its intellectual property to a manufacturer without restriction, or a BOC could grant a manufacturer a license to use the BOC's intellectual property right for a specific and limited purpose. In either case, the BOC would expect to be compensated by the manufacturer for the use of its property.

Section 273(b)(3) plainly permits a BOC to transfer or license intellectual property to a manufacturer of telecommunications equipment and to be

---

[20] Notice ¶ 12.

compensated for the use of that property. As the Commission observes in the Notice, a license arrangement can take many forms, and the form of the arrangement is often dictated by the nature of the intellectual property involved.

Consistent with the Commission's interest in preserving incentives for the BOCs to research and develop innovative products, solutions, and technologies, the Commission should not attempt to circumscribe or limit the permitted kinds of licensing arrangements or the permitted kinds of compensation arrangements between a BOC and a manufacturer. Those are matters which should be left to negotiation between a BOC and the manufacturer, because they will, and should, vary on a case-by-case basis.

b. Section 273(e) Establishes Nondiscrimination And Procurement Safeguards Which Address Any Incentive By A BOC To Favor Equipment On Which It Is Entitled To Receive Royalties.

The Commission says in the Notice that royalty arrangements between a BOC and a manufacturer may create an anticompetitive incentive to favor the equipment on which the BOC is entitled to receive a royalty, even if the equipment is inferior to competing equipment in quality or higher in price.[21] The Commission seeks comment on ways to protect against such potential anticompetitive abuses.[22]

As suggested above, the Commission should not attempt to dictate the form of the licensing arrangement which should be negotiated by the BOC and the manufacturer or the form or amount of compensation which the BOC may be

[21] Id. ¶ 12.

[22] Id.

entitled to receive as a result of such an arrangement. A safeguard against discriminatory procurement of telecommunications equipment by a BOC already exists in the Act.

Section 273(e) describes nondiscrimination and procurement safeguards which apply to a BOC's procurement of telecommunications equipment. Section 273(e)(1) provides that the BOC: "(A) shall consider such equipment, produced or supplied by unrelated persons"[23] in addition to equipment produced by its separate manufacturing affiliate and "(B) may not discriminate in favor of equipment produced or supplied by an affiliate or related person."[24]

To implement those nondiscrimination requirements, Section 273(e)(2) establishes standards for the BOC's procurement of telecommunications equipment. It provides that each BOC shall make procurement decisions for equipment "on the basis of an objective assessment of price, quality, delivery, and other commercial factors." In the Notice, the Commission asks whether "a royalty agreement between a BOC and a manufacturer [would] render that manufacturer a 'related person'"[25] and, therefore, whether procurement decisions should be based upon the procurement standards in Section 273(e)(2).

A BOC's receipt of royalties from a manufacturer of telecommunications equipment is a permitted activity. Congress anticipated the potential for abuse in the procurement of telecommunications equipment when a BOC's separate affiliate

---

[23] 47 U.S.C. § 273(e)(1)(A).

[24] 47 U.S.C. § 273(e)(1)(B).

[25] Notice ¶ 67.

is a manufacturer or when a BOC has a royalty arrangement with an unaffiliated manufacturer. The rationale underlying the nondiscrimination and procurement standards in Section 273(e) applies in both cases.

The procurement standards in Section 273(e)(2) apply to a BOC's procurement of telecommunications equipment when a BOC's separate affiliate is a manufacturer as well as to equipment on which a BOC may be entitled to receive a royalty from a manufacturer – a "related person." These standards would preclude a BOC from selecting telecommunications equipment based solely on the fact that its affiliate is engaged in permitted manufacturing or based solely on the fact that the BOC is entitled to receive a royalty on such equipment from an unaffiliated manufacturer. On the other hand, if a BOC conducts an objective assessment of telecommunications equipment which it seeks to procure on the basis of "price, quality, delivery, and other commercial factors," and if the BOC ultimately selects the equipment on which it will receive a royalty, the BOC has not engaged in unfair or anticompetitive conduct. These procurement standards represent standards which prudent businesses – both BOC and non-BOC – use for the procurement of goods and services for their businesses. These safeguards which already exist in the Act address the Commission's concern with regard to incentives provided by royalty arrangements to favor equipment in which a BOC may have a direct or indirect financial interest.

Under Section 273(b)(2)(B), the form and structure of a royalty arrangement between a BOC and a manufacturer of telecommunications equipment should be a matter for negotiation between the parties. The Commission should not attempt to

dictate the terms and conditions of that arrangement. The Commission's concern that a BOC may unfairly favor telecommunications equipment on which it is to receive a royalty is addressed by the nondiscrimination and procurement standards in Section 273(e)(1) and (2) which rely upon reasonable and objective business criteria. Royalty arrangements between a BOC and a manufacturer of telecommunications equipment under Section 273(b)(2)(B) do not require additional definition or elaboration beyond the Act.

IV. NO NEW SUBSTANTIVE RULES ARE REQUIRED TO IMPLEMENT THE DISCLOSURE REQUIREMENTS IN SECTION 273(c).

Section 273(c) requires BOCs to disclose certain information about their networks to manufacturers. U S WEST believes that this subsection, like the remainder of the subsection, applies only to BOCs that are authorized to manufacture, and no new substantive rules are needed to implement this section. Current disclosure rules to which BOCs are already subject will fulfill the mandate of this section of the 1996 Act. U S WEST suggests, however, that in employing the same rules to implement Section 273(c) the Commission make a minor modification with respect to the current short-term notice requirements.

A. Section 273(c) Applies Only To BOCs Authorized to Manufacture.

As an initial matter, the Commission seeks comment on whether Section 273(c) applies to all BOCs or only to BOCs that are authorized to manufacture under Section 273(a). In U S WEST's opinion, this subsection of Section 273 clearly applies – like all of the other subsections -- only to BOCs authorized to manufacture. Section 273 is entitled "Manufacturing by Bell Operating

Companies." Congress would have titled it otherwise had the provisions under Section 273 had broader application than to just BOCs authorized to manufacture.

B. The Commission's Current Rules Satisfy The Disclosure Requirements For Manufacturers.

The Commission additionally seeks comment on how the terms in Section 273(c), such as protocols and technical requirements, should be defined. Contrary to the Commission's tentative conclusion, U S WEST believes that current Commission rules (in particular Sections 51.325 - 51.335) more than adequately meet disclosure requirements for manufacturing entities and strongly recommends adhering to these current guidelines and time frames[26] for application to manufacturers. In following these current rules, adoption of additional definitions is not necessary.

Section 273(c) specifically requires BOCs to maintain, file with the Commission, and ensure manufacturer access to "information with respect to the *protocols and technical requirements for connection with and use of its telephone exchange service facilities.*"[27] Similarly, Section 251(c)(5) requires incumbent local exchange carriers ("LEC"), including BOCs, to give "reasonable public notice of changes in the *information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks,* as well as of any other changes that would affect the interoperability of those facilities and networks."[28]

---

[26] 47 C.F.R. §§ 51.331, 51.333.

[27] 47 U.S.C. § 273(c)(1) (emphasis added).

[28] 47 U.S.C. § 251(c)(5) (emphasis added).

The Computer rules – upon which the Section 251(c)(5) implementing rules are based – require disclosure of "all *information relating to network design and technical standards and information affecting changes to the telecommunications network* which would affect either intercarrier interconnection or the manner in which customer-premises equipment is attached to the interstate network. . ."[29]

Each of the above highlighted phrases refers to the same type of information (i.e., the necessary technical specification to provide interoperability of equipment and networks). Manufacturers need no more nor no less information than that required by interconnectors. The impact of a network change is the same on both interconnectors and manufacturers. As such, U S WEST supports adoption of the current disclosure rules and standards – with one slight modification discussed below in Section D – for implementation of Section 273(c).

C. The Make/Buy Trigger Point Is An Identifiable And Workable Standard That Provides Timely Disclosure.

The Commission also questions whether there is a distinction between Section 251(c) which requires disclosure of certain network "changes" and Section 273(c)(1) which requires disclosure of "material or planned changes." There is not. Only once a BOC has actually reached a firm business decision to deploy a technical change (the "make/buy" point), is disclosure necessary. The Commission should maintain the make/buy point as the trigger for Section 273(c) disclosure to manufacturers. There would be a terribly ineffective, inefficient, and nonsensical result if the Commission were to interpret this section to require a BOC to disclose

[29] 47 C.F.R. § 64.702(d)(2) (emphasis added).

to manufacturers changes to a BOC's facilities which had not reached the make/buy point. In fact, the make/buy point was originally adopted as the point of disclosure in the Computer III inquiry to protect the industry from premature BOC announcements that could impede carrier development efforts and inhibit network innovation.[30] Experience has shown that the make/buy trigger point is an identifiable and workable standard that provides timely disclosure. The Commission should retain it for implementation of Section 273(c).

D. The Commission Should Modify The Expedited Notice Procedures Under Section 273(c) To Permit The Use Of The Internet, Rather Than Individually Addressed Notices, For Manufacturers.

While U S WEST generally supports maintaining the notification system rules relating to Section 251(c)(5), U S WEST encourages the Commission to modify slightly the expedited notice procedures when implementing the Section 273(c) requirements. Specifically, Section 51.333 of the Commission's rules requires that in cases of changes which can be implemented within six months of the make/buy point, in addition to providing notice of a change to the Commission (which includes two paper copies to the Secretary and a paper and diskette copy to the Chief of the Network Services Division of the Common Carrier Bureau), an incumbent LEC

[30] In the Matters of: Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Report and Order, 104 FCC 2d 958, 1069 (1986); In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, Report and Order, 6 FCC Rcd. 7571, 7636 ¶ 131 (1991).

must also certify that it has in fact provided individual paper copies of the public notice of the planned change to all providers interconnecting with that LEC's network, five days prior to the required filing with the Commission:

> *(a) Certificate of service.* If an incumbent LEC wishes to provide less than six months notice of planned network changes, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by § 51.327(a) or § 51.329(a)((2), as applicable. The certificate shall include:
>
> (1) a statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and
>
> (2) the name and address of each such telephone exchange service provider upon which the notice was served.[31]

Given the allowable use of the Internet under Section 51.329 of the Commission's rules and the Internet's extensive accessibility, U S WEST has found the additional paper filing requirements (to both the Commission and numerous individuals) inefficient and administratively burdensome. Maintaining accurate lists of interconnectors (in U S WEST's case, upwards of 1500 interconnecting companies) and serving them has proved to be a difficult endeavor. Given the current environment in the telecommunications industry, U S WEST's mailing lists are constantly changing and complete accuracy becomes an ever-more-arduous goal to obtain.

---

[31] 47 C.F.R. § 51.333.